

2. Defendant Lilly has offered factual and discoverable material in the company's 12(b)(6) motion arising to the level of a FRCP 56 motion for summary judgment. Should Lilly continue with the motion to dismiss, Plaintiff requests this motion be converted into a motion for summary judgment, warranting further discovery.

WHEREFORE, PREMISES CONSIDERED, Plaintiff David Lynch respectfully requests that this Court deny Defendant Eli Lilly and Company's 12(b)(6) Motion to Dismiss.

Respectfully submitted this the 5th day of May, 2011.

DAVID LYNCH

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2011, I electronically filed *Plaintiff's First Amended Complaint* with the Clerk of this Court using the CM/ECF system, which provided a service copy on the following:

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